

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**PATRICK LEONHARDT,**

**Defendant.**

**CASE NO. 8:10CR186**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 68). The Defendant filed a motion for deviation (Filing No. 69). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objected to the lack of a downward adjustment for the safety valve in ¶ 18. In ¶ 18, the probation officer acknowledges that the Defendant might still qualify for the safety valve. Defense counsel informed the Court in an e-mail dated December 8, 2010, that the parties have stipulated that the Defendant is entitled to the safety valve. The Court will hear the objection, and the Defendant has the burden of proof by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to ¶ 18 of the PSR will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for deviation (Filing No. 69) will be heard at sentencing.

DATED this 9<sup>th</sup> day of December, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge